

17 TRANSCRIPT OF PRETRIAL CONFERENCE
18 BEFORE THE HONORABLE JOSEPH J. FARNAN, JR.

19 UNITED STATES DISTRICT JUDGE

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2 -and-

3 MCKENNA LONG & ALDRIDGE

4 BY: GASPARE J. BONO, ESQ

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13 BY: KAREN L. PASCALE, ESQ

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15 WILSON SONSINI

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17 BY: JULIE M. HOLLOWAY, ESQ

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19 PAUL HASTINGS

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24 Court Reporter: LEONARD A. DIBBS

25 Official Court Reporter

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P R O C E E D I N G S

3 THE COURT: All right. Be seated, please.

4 Good afternoon.

5 All right. We're now at what is a pretrial conference
6 in the case of LG Display and AU Optronics for a bench trial
7 scheduled to commence on June the 2nd.

If you want to announce your appearances.

9 MR. KIRK: Good afternoon, your Honor, Rich Kirk from
10 Bayard P.A.

11 My colleague with me from Bayard is Steve Brauerman.

12 My colleagues from McKenna Long whom I think you met at the
13 initial pretrial conference are Gap Bono, Lora Brzezynski, Tyler
14 Goodwyn, Cass Christenson, and in another part of the courtroom,
15 Song Jung.

16 THE COURT: Good afternoon.

17 MS. PASCALE: Good afternoon, your Honor, nice to see
18 you again.

19 Karen Pascale from Young Conaway for AU Optronics.

20 Your Honor has already met the rest of the lawyers from
21 Paul Hastings, Larry Gotts and Terry D. Garnett.

22 MR. GOTTS: Good afternoon, your Honor.

23 THE COURT: Good afternoon.

24 MS. PASCALE. And also with us today from the Wilson
25 Sonsini firm is Ron Shulman and Julie Holloway.

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2 MR. SHULMAN: Good afternoon, your Honor.

3 THE COURT: Good afternoon.

4 MS. HOLLOWAY: Good afternoon, your Honor.

5 THE COURT: Good Afternoon.

6 All right. I've read what was -- I didn't read the --

7 I didn't get a chance to look at the witness and exhibit lists.

8 I got them about an hour ago or something -- maybe two hours

9 ago. I've been having Court proceedings. I didn't get a chance
10 to look at them. I read your other submissions that came in.

11 I think a good starting point might be to say, we're
12 going to go forward on June the 2nd. We're going to adopt the
13 suggestion of, or agreement of both the parties to reduce the
14 number of patents that will be the subject of the litigation.

15 I truly tried to avoid slicing the baby. But after
16 considering the back and forth that you gave me, I've decided
17 that four patents and seven claims will be the subject of the
18 litigation.

19 I've decided that -- I think the suggestion from AUO is
20 that you be allowed to put on an offensive case initially.

21 Since it's a bench trial, the order is more of how
22 we'll put it on is more important to you and your convenience
23 than it is for any kind of strategic advantage with a jury.

24 I'm going to allow you to go first so you can then be
25 able to be involved in it.

1 MR. SHULMAN: One quick question.

2 Is that four patents total? Four patents per side?

3 THE COURT: Per side. Four patents per side.

4 I took into consideration the idea, family, the '274
5 patent family. I don't know if you were in the courtroom, but
6 these are arbitrary decisions. I don't really know. And I
7 listened to what Mr. Bono had to say about resolution.

8 I think somewhere four, three, five is fair. I'm more
9 concerned about the claims -- claim numbers. So that's what I
10 did, four each side and seven claims.

11 Where was I? I was giving you the right to go first.
12 You'll be going first.

13 I'm going to essentially allocate ten trial days.

14 As I understood it, both parties thought the June 2nd,
15 June 16th dates worked. So, we'll work with June 2nd, five
16 days. June 16th, five days.

17 With regard to -- we're going to try all the issues
18 which was LG's preference.

19 Obviously, the damages will be in the last part during
20 the -- of each case or if you want to put damages behind,
21 infringement and validity. I'm going to allow you to do it
22 whichever way you want.

23 MR. BONO: Should I wait until you're finished, your
24 Honor?

25 THE COURT: No, Go ahead.

1 MR. BONO: My only request is that AUO is going first
2 as your Honor indicated, that their whole case on their patent
3 goes first which will be all the issues on infringement, all the
4 issues on validity and their damage claims.

5 THE COURT: That's fine.

6 MR. BONO: Thank you, your Honor.

7 THE COURT: I'm just offering you the option with the
8 understanding that it's ten days. I'm not going at this point
9 allocate hours because I allocate hours on the basis of looking
10 at the witnesses. I haven't looked at the witness list.

11 In ten days if you figure on five and a half hours of
12 trial time, six hours, if you need an extra hour here and there
13 we can fit that in for you.

14 You really focus on our hotel bill for ten days rather
15 than the hours over here at the courthouse.

16 MR. SHULMAN: Recognizing that June 2nd is a Tuesday,
17 five days would be the following Monday?

18 THE COURT: Yes.

19 MR. BONO: Just for clarification.

20 It will be continuous starting on June 2nd, ten
21 business days from June 2nd?

22 THE COURT: As I understood the request, is what I'm
23 allowing them. I understood your position was. I'm allowing
24 June 2nd, five days of trial time. Then there's a break and a
25 start up on June 16th and five consecutive days.

1 They were willing to step up early and waive a jury
2 trial. I'm trying to reduce the stress in their lives with that
3 Texas trial. I thought you could --

4 MR. BONO: I understand. But then our trial would be
5 with -- would go into the following Monday, the 23rd?

6 THE COURT: Right.

7 MR. BONO: Is there anyway that your Honor would
8 consider starting on Monday, the 15th?

9 THE COURT: My birthday is June 15th.

10 MR. BONO: I understand.

11 MR. SHULMAN: He'll bring you a cake.

12 MR. BONO: If I had known I would not have asked.

13 THE COURT: Early in my career I had a six month jury
14 trial that went through June and they found out that June was my
15 birthday and they brought me a cake. It was embarrassing at the
16 time because I couldn't take the cake so I shared the cake with
17 everybody. I think that was okay.

18 I just don't do June 15th.

19 But, if you want to try and close up the time, as I
20 said, I'm not adverse to spending seven hours some days or two.
21 I'll let you do what you want.

22 MR. BONO: Thank you, your Honor.

23 THE COURT: Okay.

24 Now, I'm not going to at this point set hours.

25 We know what the subject matter of the trial is going

1 to be.

2 With regard to opening statements. If you want to do
3 an opening statement, put it in writing. I'll read it before
4 the trial commences.

5 If you don't want to have an opening statement in
6 writing, just come and let's start the evidence.

7 Closing arguments will be part of the post-trial
8 briefing.

9 With regard -- so there is no closing arguments orally
10 presented.

11 With regard to deposition presentation. It should be
12 during the course of the trial so there are no wholesale
13 submissions at the end. So, if there is a deposition to come
14 in, somebody has to get on the stand and present it.

15 With regard to evidentiary exhibits -- evidentiary
16 objections to exhibits.

17 You can make those in the exhibit list and you can also
18 during the course of the trial indicate an objection.

19 And if you maintain it in the post-trial briefing, I'll
20 rule on it.

21 Most of those kind of objections get absorbed after the
22 whole trial has been completed.

23 With regard to when the parties should be alerted to
24 the appearance of a witness, either live or by deposition, it's
25 48 hours notice except on the opening day, the Friday before the

1 commencement of trial.

2 With regard to the request to admit direct and
3 cross-examination by AOU of an overlapping witness on the
4 issues, you can do that?

5 MR. SHULMAN: It sounds like you're splitting the
6 trial. That shouldn't be an issue. We'll be handling the
7 offensive patents first for which we are responsible and there
8 will be a separate trial a week later and the Paul Hastings'
9 people will be involved in that and we won't be involved in the
10 trial.

11 Technically, there will be a split of witnesses, but it
12 will be in two separate trials?

13 THE COURT: I wasted a decision. I only have 25 good
14 decisions a day.

15 MR. SHULMAN: It was a fine decision, your Honor.

16 THE COURT: That's what I'm saying. Now, it's a
17 throwaway.

18 MR. SHULMAN: I don't think it's an issue anymore
19 because you split the trial.

20 THE COURT: Thank you. I appreciate that.

21 Motions in Limine and the request that the motions be
22 decided pretrial. As you probably heard, I lost sight of the
23 fact that Memorial Day is this Monday.

24 If you want me to rule pretrial, that would mean you
25 would have to have the motions here by next Friday, I think the

1 28th.

2 MR. SHULMAN: Our motions are on file.

3 THE COURT: I know you have yours presented. But they
4 would have to be here by Friday, then we can hopefully get you a
5 decision on Monday which is before the trial starts.

6 MR. SHULMAN: Does your Honor mean the opposition
7 briefs are due this Friday, next Friday? I didn't understand
8 that. Ours are already on file.

9 THE COURT: Your opening?

10 MR. SHULMAN: Yes.

11 THE COURT: Everything I need to make a decision has to
12 be here by Friday the 28th. Whatever schedule you all work out
13 is okay with me.

14 What I'll do is read them over that weekend and then
15 give you my decision on Monday.

16 MR. SHULMAN: Just to give some clarity on the record,
17 we will want an opportunity to respond to whatever opposition
18 they may have.

19 THE COURT:

20 you have to work out a time with them so the last paper is here
21 28th.

22 MR. SHULMAN: Very well.

23 THE COURT: There is a question of permanent injunction
24 evidence. I'm not going to address that at this time, but it
25 would be at some point after I render the decision on the patent

1 issues. And what I can tell you is that with regard to
2 permanent injunction that we take declarations, affidavits on
3 the briefing and, if necessary, limited live testimony.

4 I was actually -- and I just gave a talk about e-Bay on
5 Friday. Somebody had a chart that says we hold evidentiary
6 hearings in Delaware. I thanked them for informing me of that.
7 I guess that's what they mean when they say we take evidence?
8 Some court's don't take any evidence, they have a brief and oral
9 argument. I don't know what they do, but you'll have an
10 opportunity is the point that I wanted to make.

11 With regard to claim construction -- with regard to
12 claim construction, it's a Bench Trial. You're going to be
13 permitted to put your expert on in their best light and post
14 trial I'll allow you to submit a certain number of terms which I
15 will give you on the last day of trial that I'll construe. And
16 then I'll render an interpretation as part of the decision.

17 That should be good for your expert. And they can
18 basically tell me what they think in terms -- although, I won't
19 consider it in the context of the infringement arguments.
20 Basically, they can tell me that.

21 Special Master motions are now rolled into the trial.
22 No one is likely to get a decision granting Summary Judgment,
23 but we'll leave those on open and they will get that ruling as
24 part of the post trial decision.

25 Trial dates.

1 Oh, your request for a CMO trial date.

2 I'm not going to give that yet because I would like to
3 get through the LG/AUO trial and then I will get with Mr. Chu
4 and you and we'll get a trial date. It will be sometime toward
5 the end of the year.

6 MR. SHULMAN: Your Honor, perhaps, so there won't be
7 any possibility of a contention here, perhaps you can give us a
8 drop dead date of what patents will be in the case, the claims.

9 MR. BONO: Friday at noon is fine with us, your Honor.

10 MR. SHULMAN: That's fine.

11 MR. BONO: Two days from today, the 22nd.

12 THE COURT: This Friday at noon.

13 MR. BONO: Delaware Eastern Daylight Time.

14 THE COURT: Delaware time.

15 MR. SHULMAN: You set your watch ahead.

16 THE COURT: That's right, California time.

17 Okay. So, CMO trial date. I think that's my list.

18 MR. BONO: One other housekeeping item. CMO has two
19 pending Motions for Summary Judgement that we've requested to
20 put those over.

21 THE COURT: They will be stayed.

22 MR. BONO: Thank you, your Honor.

23 THE COURT: CMO, Mr. Chu is here. Mr. Chu could have
24 almost had this trial. I took first in. I was trying to figure
25 out a fair way of who was going to go to trial. They asked for

1 a 48 hour extension, and in the mean time two waivers came in
2 while we were on the road. They get a stay.

3 MR. BONO: Your honor, I just have one issue I would
4 like to bring up and this has to do with the deposition
5 testimony and your Honor's ruling that all deposition testimony
6 has to be shown during the trial.

7 THE COURT: Presented during the trial time.

8 MR. BONO: I'm very concerned about that ruling.

9 There are a number of third party depositions that both
10 parties took in this case primarily having to do with the issue
11 of inducement in this particular market.

12 I understand your Honor's ruling with respect to party
13 depositions of people, witnesses of the parties. I wonder if
14 your Honor could give us leeway for efficiency to be able to
15 present the non-parties depositions outside of the courtroom
16 setting since this is -- it takes a lot of time to -- on that
17 issue, necessary issue.

18 I was wondering if we could just split it as to the
19 non-parties which are a lot of depositions, but short segments
20 of them, whether we could have the leeway to submit just those
21 to the Court outside the time period?

22 MR. GOTTS: Your Honor, we would object to that. We
23 believe that it all ought to go in at the time otherwise we have
24 this problem of an unbalanced record in terms of time allotted
25 and inundate the court with deposition transcripts.

1 If the parties are reasonable in terms of their
2 designations and counter designations and if they are allotted a
3 certain amount of time and charged against the parties, that
4 makes the party reasonable. We would request to proceed as
5 ordered.

6 THE COURT: All right. I'll maintain the order.

7 Anything else?

8 MR. GOTTS: No, your Honor.

9 MR. BONO: Just one other clarification. We're going
10 to have sort of AUO's trial going first. I assume in that
11 trial, the order would be as in any trial, as if they had only
12 their patents at issue, they would call their witnesses on
13 infringement and then we would call our witnesses as to the
14 non-infringement and invalidity and then they would call their
15 witnesses in rebuttal to those points and then we would proceed
16 to their damages case and cross examine their witness and
17 present a rebuttal witness to that and that would conclude their
18 case?

19 MR. SHULMAN: Certainly with respect to the patent
20 issues, I think your Honor mentioned at the outset is to do
21 damages later and that we're going choose to do damages, on both
22 sides of our case on the tail end of the 2nd trial.

23 MR. BONO: I object to that totally, your Honor.

24 I made that clarification earlier. They wanted to go
25 first.

1 And I think that the only way to logically do this is
2 for them to complete their entire case in their five days just
3 so we know we have to complete our entire case in five days. We
4 have the opportunity in their case as they will in ours to
5 present our rebuttal testimony, expert witnesses with respect to
6 non-infringement and invalidity and cross examine their expert
7 on damages.

8 I really think that makes a lot of sense. They should
9 not have the ability to wait until the end because to have
10 piecemeal -- then we're back to piecemeal and a separate way of
11 presenting of the case.

12 THE COURT: Listen, what do I know?

13 My thinking was if damages was from what I read, it
14 sounds like a pretty important part of the case, that bringing
15 -- typically, the damages expert for one side likes to sit and
16 listen to the other damages expert.

17 I was trying to think of a way to have them both here
18 at the same time without a lot of inconvenience and put that
19 damages evidence on.

20 I'll go along with you. I'll make them do it in their
21 first five days.

22 MR. BONO: Thank you.

23 MR. SHULMAN: Your Honor, with respect to that issue.
24 The damages issue on both sides are interconnected.

25 THE COURT: That's what I thought.

1 MR. SHULMAN: If we don't use our full allotted time
2 and we have to use some of the time from the second trial, we
3 would prefer to put damages on all at once because that's how
4 our damages expert has put together the analysis. We're not
5 taking any of their time. We will take it out of our half of the
6 trial -- our allotted time. You're not necessarily keeping
7 track of ours.

8 We'll have to truncate the rest of our presentation in
9 order to accommodate as part of our damages case.

10 THE COURT: I agree with your rational. I understand
11 what you told me very clearly. But since I left -- let you go
12 first and I talk about complete trials, even though it's
13 irrational, it's consistent. Sometimes consistency is more
14 important when you're making rulings as a judge.

15 I'm going to be consistent. I'm going to let them do
16 it the way you want. Both of you are free to talk about this.
17 I agree with your rational.

18 I allowed you to go first and put on the trial. I've
19 got to stick with that.

20 MR. SHULMAN: Very well. It's not very well, it's the
21 ruling.

22 THE COURT: Now, you could get Writ of Mandamus. I
23 should wait for that to come down.

24 You try to be consistent. That's the thing because you
25 try to keep balance and keep some sort of balance on the playing

1 field.

2 You can talk about it. Other than that, we'll make you
3 go in your full five full days, go full in your five days. Mr.
4 Bono will go full in his five days.

5 MR. SHULMAN: Okay.

6 MR. BONO: One last issue, your Honor.

7 THE COURT: You only had one issue when you stood up.

8 MR. BONO: My colleague just reminded me of on other
9 and if I don't raise it she's going to be upset with me.

10 THE COURT: All right. Have at it.

11 MR. BONO: Motions in Limine. We haven't filed any
12 yet. We intend to file some. And I take it we can so do it?

13 THE COURT: Yes.

14 MR. BONO: Thank you.

15 THE COURT: You heard what they said, they want enough
16 time to respond to it. You've got to be fair to them. The last
17 paper has to be here on that Friday the 28th.

18 MR. BONO: Understood.

19 MR. SHULMAN: Nothing else from us, your Honor.

20 THE COURT: We'll see everyone on the second at 9:00
21 a.m.

22 (At this time court proceedings concluded.)

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